



**GAMING EDITION**

# **Gaming 102: Current Gaming Landscape**

Tuesday, May 11, 2021  
1 p.m.



**GAMING EDITION**

# **Other Gaming in Florida**

Amusement Games, Bingo,  
Charitable Raffles, Penny-ante  
Games, Sweepstakes, and  
Internet Cafes





# Amusement Games

- Under s. 546.10, F.S., Florida has legalized certain amusement games and machines which are operated
  - only for the bona fide entertainment of the general public, and
  - by the application of skill with no material element of chance, meaning the participant controls the outcome
- Games and machines are activated by inserting coins, cards, coupons, slugs, tokens, or similar devices
- Games and machines must be operated at an arcade amusement center with at least 50 games or machines on the premises
- Awards may never include cash or cash equivalents (such as a gift certificates), alcohol, or tobacco
- Penalties for violations include criminal sanctions, civil sanctions, and administrative sanctions
- There are 3 types of games and machines allowed: Type A, Type B, and Type C



# Type A Amusement Games (Replay Machines)

- Does not award anything of value other than replays of the game
- 15 replays maximum per game
- Replays may be accumulated, but may not be exchanged for anything of value
- Machines may not have a "knock-off" switch
- May be operated and possessed by anyone
- Example: pinball



# Type B Amusement Games (Coupons)

- May award coupons or points to be used for redeeming onsite prizes
- Coupon value cannot be more than \$5.25, as adjusted by the CPI
- No single items available as a prize may have a wholesale cost of more than \$525
- May involve head-to-head competition
- May only be operated at timeshare facilities, public food and lodging establishments, and DBPR-licensed arcade amusement centers, bowling centers, and truck stops
- Example: Dave & Buster's-style arcade games



# Type C Amusement Games ("Claws")

- May give the prize directly to the player
- Prize value cannot be more than \$52.50, as adjusted by the CPI
- Limited to operating in timeshare facilities, public food and lodging establishments, arcade amusement centers, bowling centers, truck stops, certain retailers, and certain veterans' service organizations
- Example: claw machines



# Bingo

- Florida Statutes specifically authorize the playing of charitable bingo as an exception to the general gambling prohibition (s. 849.0931, F.S.)
- Charitable, nonprofit, or veterans' organizations qualified as s. 501(c) tax exempt organizations, may conduct bingo games as long as the entire proceeds derived from the conduct of the games, less actual business expenses, are donated
- Other organizations may conduct bingo games conditioned upon the return of all proceeds to playing in the form of prizes
- No bingo jackpots may exceed \$250 in actual money or its equivalent and no more than three jackpots are allowed in any one session of bingo
- Instant bingo tickets may not be more than \$1



# Charitable Organizations

- In addition to bingo, qualified charitable organizations may conduct drawings of chance, or raffles, and award prizes in accordance with s. 849.0935, F.S.
- The charitable organization must inform participants of the rules of the raffle, the organization's identifying information, the source of prizes, the time and location, and that no contribution is required
- The charitable organization may not condition the award of a prize on whether the participant has donated
- Penalties for violations are treated as an unfair and deceptive trade practice, or may be charged as a misdemeanor





# Penny-ante Games

- Games or a series of games of poker, pinochle, bridge, rummy, canasta, hearts, dominoes, or mah-jongg in which the winners of any player in a single round, hand, or game do not exceed \$10
- Are not illegal as long as they are conducted strictly in compliance with applicable s. 849.085, F.S.
- Must be conducted in a dwelling (owned or rented residence of a participant in the game) or in a common area (e.g., condominium clubhouse)
- No consideration or commission may be received for hosting
- Admission may not be charged
- No advertising for the event may occur



# Sweepstakes

- A type of game promotion conducted in connection with and incidental to the sale of consumer products or services and containing elements of chance and prize
- Well-known example is the McDonald's Monopoly game where players either receive game pieces for purchasing certain food items or send in for free game pieces
- Game rules must include a "no consideration" clause such as "no purchase necessary," otherwise, the sweepstakes is an illegal lottery
- If the prizes offered total more than \$5,000, the game operator must register with the Department of Agriculture and Consumer Services seven days prior to the commencement of the game promotion



# Internet Cafes/Adult Arcades

- Before legislation (HB 155) was adopted in 2013, internet cafes and adult arcades were becoming commonplace throughout Florida. The legislation was brought to reduce criminal activity and the proliferation of unregulated gaming
- The legislation clarified regulation of and imposed new restrictions and prohibitions on slot machines and casino-style games to ban the type of games used at most internet cafés and adult arcades. Restrictions on arcade games were further clarified in legislation in 2015
- Such internet cafes and adult arcades typically sold a product to a customer, usually internet time or long-distance telephone minutes, and the customer also received “sweepstakes” entries that were predetermined to win or lose. With those entries, the customers won cash prizes, either directly or by playing a casino-style game
- According to the cafes and arcades, they were operating a sweepstakes, but it was generally considered illegal gaming or illegal slot machines, as they awarded cash prizes for playing games of chance



# Internet Cafes/Adult Arcades

- Some unlawful internet cafes and adult arcades offered customers a chance to play pre-reveal games, which reveal the outcome before a coin or token is inserted in the game. Such games have been determined by the 1<sup>st</sup> District Court of Appeals to be illegal slot machines (Gator Coin II, Inc. v. DBPR, 254 So.3d 1113 (Fla. 1st DCA 2018))
- In order to curb internet cafes and adult arcades and perceived associated illegal conduct, many local governments in Florida have banned "simulated gambling devices," which are a type of game typically found in unlawful cafes and arcades
- Many internet cafes and adult arcades do not qualify as a lawful arcade amusement center or sweepstakes





# Gaming on Cruises to Nowhere

- Cruises to Nowhere generally operate out of one port, with no international port of call, and sail to international waters where the ship's casinos may operate
- Cruises to Nowhere began in 1984 with the operation of one ship. The industry grew in the 1990s to many ships operating out of every major port in Florida. For reasons including increased costs of operation and the expansion of legal gaming in Florida, the industry began to decline in 2008. Currently, the industry is limited to a few ships generally operating out of limited ports
- Though the gaming revenues are not taxable by the state, taxes are collected on alcoholic beverages and by the drink tax. Also, sales and use taxes are paid to the state for purchases of tangible personal property and diesel fuel, and on admission charges

The background of the slide features a large, faint, circular seal of the House of Representatives. The seal contains an eagle with a shield, holding an olive branch and arrows, with a constellation of stars above its head. The words "HOUSE OF REPRESENTATIVES" are inscribed around the perimeter of the seal.

# **Gaming 102: Current Gaming Landscape**

Sports Betting and Fantasy Sports

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# Differences Between Sports Betting and Fantasy Sports

	Sports Betting	Fantasy Sports
Who do participants compete against?	Participants compete against <i>the house</i> .	Participants compete against <i>other participants</i> .
What do participants wager on?	Participants wager on the outcomes of <i>real</i> sporting events	Participants manage <i>fictitious</i> sports teams composed of athletes chosen from a professional sports organization, and winning outcomes are predominantly determined by statistical performance of the athletes.
Is it skill or chance?	Though many believe that both sports betting and fantasy sports involve some level of skill, winning outcomes in sports betting are generally determined more so <i>by chance</i> than skill.	Theoretically, winning outcomes in fantasy sports involve more <i>skill</i> in comparison to the skill needed for a winning outcome in sports betting.
Is it gambling?	Sports betting is classified as a Class III game under the Indian Gaming Regulatory Act (IGRA) regulations.	No specific legal determinations have been made on specific proposals in Florida; however, to the extent that fantasy sports involve skill, then perhaps no. While fantasy sports can be played over the course of an entire season, daily fantasy sports (DFS) are a variant of fantasy sports that are played over short periods often ranging from one day to one week. DFS has been criticized for being more a game of chance than skill and, thus, more akin to gambling/sports betting than to traditional fantasy sports.



# Sports Betting Law

- In May 2018, the U.S. Supreme Court invalidated the Professional and Amateur Sports Protection Act (PASPA), a 1992 federal law that prohibited states from allowing sports betting, except for states that were grandfathered in. Since the ruling invalidating PASPA, other states have authorized or implemented sports betting.
- Florida's legal situation appears to be more complicated than most other states because six months after the Court's ruling, Florida voters ratified Amendment 3, codified as article X, section 30 of the Florida Constitution. The amendment seeks to ensure that Florida voters, rather than the Legislature, have the exclusive right to decide whether to authorize casino gambling in Florida. However, the amendment does not:
  - Include pari-mutuel wagering on horse racing, dog racing, or jai alai exhibitions in the definition of "casino gambling".
  - Limit the Legislature's authority to restrict, regulate, or tax any gaming or gambling activities.
  - Limit the ability of the state or Native American tribes to negotiate gaming compacts pursuant to IGRA for the conduct of casino gambling on tribal lands.
  - Affect any existing gambling on tribal lands pursuant to compacts executed by the state and Native American tribes pursuant to IGRA.





# Sports Betting Revenue in Other States

## U.S. Sports Betting Revenue for States with Legal Sports Wagering

June 2018 - April 2021

Jurisdiction	Handle	Revenue	Hold	Taxes/Jurisdiction Revenue
Arkansas	\$61,761,884	\$8,492,886	13.80%	\$1,161,283
Colorado	\$1,779,207,287	\$109,430,551	6.20%	\$4,492,674
Delaware	\$367,918,079	\$56,350,643	15.30%	\$37,480,299
Illinois	\$2,973,967,641	\$208,833,858	7.00%	\$33,712,887
Indiana	\$3,144,124,762	\$252,672,653	8.00%	\$24,003,904
Iowa	\$1,242,044,933	\$93,418,553	7.50%	\$6,356,833
Michigan	\$990,874,323	\$80,334,316	8.10%	\$2,909,396
Mississippi	\$1,056,150,981	\$122,326,922	11.60%	\$14,679,231
Montana	\$ -	\$ -	--	\$ -
Nevada	\$14,522,492,563	\$909,881,000	6.27%	\$61,416,968
New Hampshire	\$459,501,873	\$33,923,241	7.40%	\$15,592,561
New Jersey	\$13,548,845,123	\$920,724,567	6.80%	\$118,246,031
New Mexico	\$ -	\$ -	--	\$ -
New York	\$ -	\$22,122,017	--	\$2,212,202
Oregon	\$354,109,471	\$30,928,466	8.80%	\$ -
Pennsylvania	\$6,773,721,093	\$507,656,892	7.50%	\$124,740,056
Rhode Island	\$555,425,715	\$48,178,105	8.70%	\$24,570,834
Tennessee	\$905,844,523	\$78,044,908	8.60%	\$15,543,918
Virginia	\$324,674,870	\$15,824,857	4.90%	\$340,304
Washington DC	\$126,852,222	\$19,553,747	15.40%	\$1,385,675
West Virginia	\$818,972,751	\$63,442,060	7.70%	\$6,344,206

Source: <https://www.legalsportsreport.com/sports-betting/revenue/>

## Definitions:

- **Handle:** Amount wagered over the time period.
- **Revenue:** Amount of money kept by sportsbooks out of the amount wagered.
- **Hold %:** How much revenue sportsbooks keep as a function of handle.
- **Taxes/state revenue:** Taxes collected by state and local jurisdictions; or state share of proceeds in revenue-sharing markets.



# Sports Betting in Other States – NCSL Data

- Sports betting is offered in 20 states and the District of Columbia. It is legal but not yet operational in another five states. A handful of states, including North Carolina, New Mexico and Washington, do not have state-approved sports betting but have authorized it at tribal casinos. Intrastate mobile sports betting has been authorized in 14 states, D.C. and Puerto Rico, so bettors can place bets from their phone or computer. (In Tennessee, sports betting is only available online.) Of these states three states allow it very narrowly: Mississippi, Montana, and Washington only allow bets from a mobile phone to be placed **while on casino premises**.
- The tax rates on sports betting vary widely. Most states have tax rates between 5% to 20%. In Pennsylvania, the state gets more than a third of all revenues and a few of the states with lottery-run operations take half of the total profit or more.
- In general, the tax rates for retail operators and mobile operators are the same. New Jersey uniquely charges a higher tax rate for mobile betting (9.75% land-based vs. 14.25% online).



# Sports Betting in Other States – NCSL Data (Cont'd)

- Higher rates may maximize state revenues, however some states have pursued low rates to make legal sports betting products competitively priced with illegal market products and thus encourage more gamblers to leave the illegal market. Based on the revenue numbers in the states so far, there is no clear relationship between tax rates and revenue performance.
- States have also imposed licensing fees. Illinois and Pennsylvania imposed an initial licensing fee of \$10 million.
- Evidence suggests that mobile gaming creates a larger revenue stream, but there are potential costs to weigh, too. Opponents have expressed concerns that making gambling opportunities available online could lead to higher rates of gambling addiction and destructive personal financial decisions.



# Sports Betting in Other States – NCSL Data (Cont'd)

- In general, sports betting is relatively low-margin compared to other gaming. Most wagers received are paid out for player prizes; nationwide, the average hold for sportsbooks is 7.2%. So, even in New Jersey, sports betting brings in roughly 20 times less revenue than the lottery and is only a fraction of total casino gambling revenue.
- New Jersey currently has the largest sports betting market. In calendar year 2020, it brought in \$49.4 million in new tax revenue. Mobile betting accounts for 95% of total amount wagered in the state. Pennsylvania brought in a total of \$38.7 million in state tax revenue. Roughly three-quarters of that was from mobile sports betting.





# Illegal Sports Betting

- The size of the illegal sports betting market in the U.S. is inherently difficult to measure. Such gaming occurs in a variety of formats, including betting with bookies, online betting with offshore operators, and through casual forms such as office pools.
  - In 1999, the National Gambling Impact Study Commission estimated that the size of the illegal sports betting handle in the U.S. was \$80 - \$380 billion per year, and revenue was \$4.8 - \$ 22.8 billion per year.
  - In a more recent study conducted by Ernst & Young for the American Gaming Association (AGA) estimated at least \$149 billion is bet illegally in the U.S. annually. Using this estimate, the illegal sports betting market would rank 15th on the most recent Fortune 500 businesses based on revenue.
- In a 2015 online consumer survey, Ernst & Young found that approximately 28% of U.S. adults bet on sports, wagering an average of \$1,554 over the previous 12 months. As applied to the currently available demographic data for Florida, these figures equate to approximately \$7.5 billion in estimated annual sports betting in Florida.



# Illegal Sports Betting (Cont'd)

- Even after legalization, the legal sports betting industry may face competition from illegal sports betting due to the competitive advantage that illegal operators have by not paying taxes, which leads to illegal operators being able to offer more attractive odds and lines than legal operators. Additionally, illegal operators may benefit from prohibitions on certain types of sports betting (e.g., college football proposition bets).
- Although not all bettors will immediately shift from illegal to legal sports betting, legalizing sports betting may cause some individuals who do not currently wager on sports to begin betting and may cause those who are currently betting illegally to wager more money through legal operators.
- The AGA's survey on sports betting consumer behavior in 2019 shows that bettors are increasingly choosing legal sportsbooks over illegal operators when placing their wagers.
  - In states where sports betting was not yet legal in 2019, bettors reported a 21% increase in use of illegal sports betting methods.
  - In states with legal sports betting in 2019, bettors reported a 22% decrease in use of illegal sports betting methods.



# Illegal Sports Betting (Cont'd)

- Top reasons why bettors shift to legal betting include:
  - Confidence that bets will be paid out;
  - Awareness of the legal options; and
  - Desire to use a regulated sportsbook.
- Professor and criminologist Jay Albanese of Virginia Commonwealth University conducted a study that demonstrated the strong ties between illegal sports betting and organized crime. His study found:
  - Illegal gambling operators were typically large-scale, involving between eight and 33 people, often operating online and offshore for many years;
  - Illegal gambling operations financed a range of criminal activities, including money laundering, racketeering, drug trafficking, extortion, and human trafficking.



# Illegal Sports Betting and Public Perception

- The AGA commissioned opinion research prior to Super Bowl 50 (2015) to gauge public attitudes toward sports betting:
  - 72% of Super Bowl viewers believe allowing states to regulate sports betting will make it safer for consumers;
  - 65% of Super Bowl viewers believe that transparent, regulated wagering will either strengthen the integrity of the game or have no impact on game outcomes;
  - 68% believe legal, regulated sports betting will generate tax funds for much needed local programs such as education and public safety.
- A 2020 survey by the AGA demonstrates consumer confusion around the legality of some methods of sports betting and, thus, the need to further educate consumers on how and why to bet legally:
  - 55% of illegal bettors believe they are mostly betting legally.
  - 84% of these bettors are “surprised” to learn they are betting on illegal websites.





# Fantasy Sports Market

- The number of fantasy sports participants in Florida may be between 2,982,667 and 3,265,786.
  - According to the Fantasy Sports & Gaming Association, 19% of Americans aged 18+ participate in fantasy sports. As applied to the currently available demographic data for Florida, this figure equates to an estimated 3,265,786 fantasy sports participants in Florida.
  - Another estimate from the Fantasy Sports & Gaming Association is that there are 45.9 million estimated fantasy sports players aged 18+ in the U.S. As applied to currently available 2020 Census data, this figure equates to an estimated 2,982,667 fantasy sports participants in Florida.



# Fantasy Sports Law Generally

- Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA):
  - Federal legislation that prohibits any person engaged in the business of betting or wagering from knowingly accepting various forms of payments in connection with another person's participation in unlawful internet gambling.
  - Definition of "bet or wager" expressly excludes fantasy sports that meet certain criteria.
  - Does not have the effect of legalizing fantasy sports.
- Skill versus chance: States take different approaches on whether fantasy sports are gambling. In most states, fantasy sports are not considered gambling if they involve more skill than chance ("dominant factor test"). In a minority of states, fantasy sports are considered gambling if results are based on any amount of chance ("any chance test") or if chance is a material element that affects the game's outcome ("material element test").
- While fantasy sports can be played over the course of an entire season, daily fantasy sports (DFS) are a variant of fantasy sports that are played over short periods often ranging from one day to one week. DFS has been criticized for being more a game of chance than skill and, thus, more akin to gambling/sports betting than to traditional fantasy sports.



# Fantasy Sports Law in Florida

- Florida law does not expressly address fantasy sports. As such, there is currently no licensing or regulatory framework for fantasy sports.
- The legality of fantasy sports appears to turn on whether the contest involves:
  - A "stake, bet, or wager" versus a "purse, prize or premium"; and
  - Skill versus chance.
- Two important criminal statutes:
  - Section 849.25, F.S., Florida's anti-bookmaking statute, provides a criminal penalty for "taking or receiving, while engaged in the business or profession of gambling, *any bet or wager* upon the result of *any trial or contest of skill*, speed, power, or endurance of human, beast, fowl, motor vehicle, or mechanical apparatus or upon the result of any chance, casualty, unknown, or contingent event whatsoever." The statute provides factors that may constitute evidence of bookmaking, including charging a percentage on accepted wagers, receiving more than five wagers in a day, and receiving over \$500 in total wages in a single day or over \$1500 in a single week.



# Fantasy Sports Law in Florida (Cont'd)

- Two important criminal statutes (cont'd):
  - Section 849.14, F.S., provides a criminal penalty for any person who "*stakes, bets or wagers any money or other thing of value upon the result of any trial or contest of skill, speed or power or endurance of human or beast . . . .*" The statute also punishes any person who receives such money or thing of value and any person who aids the proscribed acts.
- A 1991 Attorney General's Office Opinion states that "[s.] 849.14, F.S., prohibits the operation of and participation in a fantasy sports league whereby contestants pay an entry fee for the opportunity to select actual professional sports players to make up a fantasy team whose actual performance statistics result in cash payments from the contestants' entry fees to the contestant with the best fantasy team."



# Fantasy Sports Law in Florida (Cont'd)

- Although ss. 849.14 and 849.25, F.S., criminalize stakes, bets, or wagers on trials or contests of skill, there is an important distinction in case law between "stakes, bets, or wagers" (illegal) and a "purse, prize, or premium" (legal if it involves skill).
  - A stake, bet, or wager is something of value put up by parties with the understanding that one or the other gets it for nothing but by chance.
  - A purse, prize, or premium is something of value offered for the winner of a contest, but for which the one offering it does not compete and stands no chance to recover any part of it and for which the entry fee does not contribute to the prize or pool. If the purse, prize, or premium:
    - Involves a fete of mental or physical skill, it is not gambling.
    - Is contested for in a game of chance, it is gambling.
- A violation of state law may also be a violation of the federal Illegal Gambling Business Act, depending on the size of the illegal business operation.